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Improper Procurement Practices Used In Leasing Office Space In Hammond, Louisiana

General Services Administration

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

LCD-74-345

APRIL 21, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179903

a The Honorable Russell B. Long
United States Senate

Dear Senator Long:

In response to your letter of October 16, 1973, written *c2* jointly with Senator J. Bennett Johnston, and Representatives *c3* John Rarick and Gillis Long, we reviewed the actions leading to a lease contract award by the General Services Administration (GSA) *1* for a Social Security Administration (SSA) office *2* in Hammond, Louisiana. We directed our review primarily *✓* to determining the validity of allegations of improper GSA actions as expressed by, or on behalf of, the unsuccessful offeror, Dr. J. T. DePaula. Details of our findings on these allegations are contained in appendix I.

GSA did not follow its prescribed procedures in soliciting offers for SSA office space. Initially GSA negotiated only with the eventually successful offeror--Messrs. Steve and Pat Tallo (Tallo Brothers)--without making a market survey to identify all existing property that might satisfy SSA's requirement. (See p. 5.) GSA officials said they failed to follow prescribed procedures because SSA urgently needed office space and because they knew that office space in Hammond was limited.

GSA did not adequately review the Tallo Brothers' offer as it failed to notice that the offer provided for vinyl floor covering, instead of carpeting as specified in the solicitation of offers. GSA awarded the contract on the basis of an offer that did not fully comply with the requirements set forth in its solicitation of offers. (See pp. 13 to 15.) Although the Tallo Brothers complied with these requirements after the contract had been awarded, GSA's failure to properly review the offer was an administrative deficiency that could have affected the amount of the Tallo Brothers' final offer.

In our opinion, the deficiencies in the solicitation and review of offers represent poor procurement practices but do not legally negate the contract award to the Tallo Brothers.

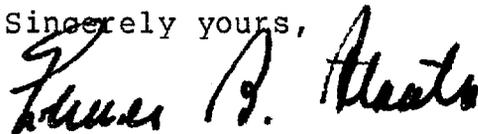
B-179903

While we found no evidence that GSA willfully or intentionally acted improperly; when viewed as a whole, these deficiencies create the appearance of favoritism towards the Tallo Brothers, which in turn casts doubt that the procurement was conducted impartially. Further, the GSA procedures provide no assurance that the award was made to the low offeror conforming to the specifications.

The Acting Administrator, GSA, in commenting on our findings and tentative conclusions, said that the infractions noted in our report were not prejudicial to Dr. DePaula nor in contravention of GSA's regulations. The Acting Administrator said it was regrettable that GSA did not tell the Tallo Brothers before the contract was awarded that their offer did not provide for the proper floor covering. He pointed out, however, that the Tallo Brothers recognized carpeting as a contract requirement when the matter was called to their attention and that they did not ask for, nor did the Government pay, a rent increase for the carpeting. He also said that the omission, on the part of the contracting officer to require a clarification of the Tallo Brothers' offer was not justified under the circumstances recited in the report.

We are sending copies of this report to other Members of Congress who have expressed an interest in this matter. We do not plan to distribute this report further unless you or one of the other recipients agree or publicly announce its contents.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Heath". The signature is written in a cursive, slightly slanted style.

Comptroller General
of the United States

IMPROPER PROCUREMENT PRACTICES USED IN LEASINGOFFICE SPACE IN HAMMOND, LOUISIANAGSA STATUTORY AUTHORITY

The Administrator of General Services, under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(i)), has the authority to enter into real property leases for Federal Government agencies and to manage leased space. Congressional approval of building leases for less than \$500,000 a year is not required, nor must a prospectus containing the details of the transaction be sent to the Congress.

The responsibility for managing the GSA lease acquisition program is assigned to the Acquisition Division, Office of Space Management, Public Building Services, at the central office level and to the Space Management Division, Public Building Services, at the regional level. The regulations applicable to real property acquisition by lease are contained in GSA's handbook entitled "Acquisition of Leasehold Interests in Real Property", (PBS P 1600.1).

The regional offices have full responsibility and authority for all matters relating to real property acquisition by lease, in accordance with and subject to limitations prescribed by the central office. Among these limitations, the regional offices must obtain central office approval for leases (1) in excess of 5 years, (2) when total rentals exceed \$1 million, (3) when the average annual rental exceeds \$500,000, and (4) when the annual rental rate exceeds \$6 a square foot of net usable area, including services.

SSA REQUEST FOR OFFICE SPACE

The SSA office in the Tallo Brothers' building located at 124 Southwest Railroad Avenue, Hammond, Louisiana, occupied 2,221 net usable square feet of leased space. The term of the lease was March 16, 1966, through September 30, 1974, with the Federal Government having lease termination rights upon giving 60 days' written notice.

On March 9, 1973, the Department of Health, Education, and Welfare asked GSA to provide 1,964 additional square feet of space in Hammond for a new SSA program scheduled to be operating by the end of 1973.

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SSA wanted all its programs housed in contiguous space. Since the Tallo Brothers could not provide additional space in the SSA-occupied building, GSA had to acquire space elsewhere. The GSA regional office, Fort Worth, Texas, awarded a contract to the Tallo Brothers on August 30, 1973, for 4,185 square feet of office space in a new building in Hammond and terminated the existing lease.

GSA AWARD CHALLENGED

Dr. DePaula questioned the propriety of GSA's procedures and actions in acquiring the additional SSA space. He said he was precluded from a fair opportunity to compete for the contract because GSA

- gave the Tallo Brothers advance notice of the requirements,
- did not conduct an adequate market survey,
- did not advertise the solicitation of offers,
- did not give him enough time to submit an offer,
- did not consider award factors, other than price, in making the award,
- assured the Tallo Brothers they would be awarded the contract, and
- disclosed his offer to the Tallo Brothers and let them resubmit their offer.

In a letter to a congressman dated August 28, 1973, the Acting Commissioner, SSA, said there were no plans to relocate the agency's office in Hammond. Dr. DePaula expressed concern over this statement because GSA had established August 28, 1973, as the deadline for submitting contract offers that would result in relocating the Hammond office.

GSA's method of acquiring office space for SSA in Hammond and our findings and conclusions concerning the allegations made by and on behalf of Dr. DePaula follow.

Allegation

GSA gave the Tallo Brothers advance notice of requirements.

Findings

A GSA official said GSA gave the Tallo Brothers advance notice of its requirements, in accordance with its practice under the leasing regulations to ask existing lessors to provide needed additional contiguous space. The Tallo Brothers were told on March 23, 1973, of the need for additional space at the existing site. On April 5, 1973, the Tallo Brothers told GSA the requested space was not available at the existing site but offered to construct a new building to meet SSA's total space requirements.

We believe that GSA's advance notice to the Tallo Brothers was in line with its usual practice and was appropriate.

Allegation

GSA did not conduct an adequate market survey.

Findings

GSA regulations require that a market survey be made for all lease acquisitions and renewals. A market survey identifies available property and provides the contracting officer with a valid basis for soliciting offers.

A GSA official told us that market surveys made in 1965 and 1970 showed suitable office space was limited in Hammond. Because GSA knew that office space in Hammond was scarce, it did not make another survey in 1973 but decided to negotiate a sole-source contract with the Tallo Brothers.

GSA made a market survey in September 1965 when it acquired the space for SSA. GSA mailed solicitations 1 month later to 12 firms and individuals. Of the four responses, one was from the Tallo Brothers and one was from Dr. DePaula. None of the offers were acceptable to GSA.

Later, after negotiating, the Tallo Brothers met GSA's requirements and received the contract. GSA told Dr. DePaula and the other two unsuccessful offerors that their names would be kept on a mailing list and that they would be given an opportunity to submit proposals for any future requirements in Hammond.

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In April 1970 GSA made another market survey which included newspaper advertising and mailing circulars describing SSA's space requirements to 18 firms and individuals. Neither Dr. DePaula nor the other two unsuccessful offerors from the 1965 solicitation were among those sent circulars. Three responses were received offering space in old buildings that were unacceptable to GSA. As a result, the Tallo Brothers' lease was renewed for another 5-year term.

Dr. DePaula told us he did not respond to the 1970 advertisement because he did not see it.

The contracting officer said, because SSA urgently needed a large amount of space to be acquired in 1973, he failed to contact Dr. DePaula and the two previous offerors and did not review the 1966 contract file. He said it was an oversight resulting from existing circumstances.

We believe GSA's failure to make the required survey in the 1973 leasing was improper.

Allegation

GSA did not advertise the solicitation of offers.

Findings

GSA regulations require newspaper advertising as part of the market survey in all transactions involving new, succeeding, and superseding leases or lease renewals. The regulations provide, however, that the Commissioner, Public Building Services, may waive newspaper advertising requirements if it is in the best interest of the Federal Government.

On January 29, 1973, the Acting Commissioner, Public Building Services, issued a memorandum to all GSA regional administrators about SSA's need for new facilities or expansion of existing ones at about 970 locations. The Acting Commissioner said that new facilities had to be delivered to SSA by October 1973 so that its new program, for which it needed the space, could be fully operational by the end of the year.

To meet this deadline, streamline acquisition procedures, reduce the administrative workload and increase

productivity, the Acting Commissioner issued guidelines. Among other matters, he waived the requirement for newspaper advertising for leases less than 5,000 square feet of space. He said newspaper advertising would be used whenever, in the judgment of the contracting officer, time permitted and it would serve a useful purpose.

Dr. DePaula also asked about diverse actions taken by the Federal Government, such as advertising for the leasing of space in Muskogee, Oklahoma, but not advertising for space in Hammond. The contracting officer gave us the following explanation.

1. The space required at Muskogee was 73,450 square feet and the space required at Hammond was only 4,185 square feet. (As mentioned above, less than 5,000 square feet meets the requirement for waiver.)
2. The space at Muskogee was not for SSA use; therefore it did not meet the waiver requirements in the January 29, 1973 memorandum of the Acting Commissioner, Public Building Services.
3. The lease at Hammond was for only 5 years but the lease at Muskogee was for 20 years.

Federal regulations permit GSA to negotiate a space contract when competition is impractical. Because of the difficulty GSA had in 1965 and 1970 in obtaining suitable office space and because of SSA's urgent need for space, GSA felt justified in negotiating a contract with the Tallo Brothers on a sole-source basis rather than advertising for offers.

Because of the Commissioner's waiver of the newspaper advertising requirement and GSA's knowledge and experience regarding available office space in Hammond, we believe that GSA was complying with regulations in not advertising for bids in the newspapers.

Allegation

GSA did not give Dr. DePaula enough time to submit an offer.

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Findings

GSA regulations do not state a specific time period for submitting offers; however, GSA officials told us the normal time period is 3 to 4 weeks.

The GSA regional office gave the Tallo Brothers a solicitation of offer on July 13, 1973, and asked that they submit an offer within 2 weeks. The Tallo Brothers submitted their initial offer on July 24, 1973, or 11 days after receiving the solicitation.

GSA was told by telephone on July 13, 1973, that Dr. DePaula was interested in submitting an offer on the SSA contract. According to GSA, Dr. DePaula was not sent a solicitation of offer because of an apparent mixup in routing the memorandum of the July 13 telephone call. When GSA received a second telephone request on Dr. DePaula's behalf on July 25, GSA sent him a solicitation. This solicitation of offers that included an August 1 deadline did not include a sample floor plan. GSA sent Dr. DePaula a sample floor plan on August 10.

On or about July 30, 1973, GSA extended Dr. DePaula's deadline for submitting his offer from August 1 to August 15; on August 9 GSA extended the deadline from August 15 to August 22. We were told that GSA willingly granted all extensions. Dr. DePaula submitted his initial offer on August 20, 1973, 27 days after receiving the solicitation and 2 days before the deadline.

GSA opened the Tallo Brothers offer on August 1 and Dr. DePaula's offer on August 23, 1973. Consistent with its procurement regulations, GSA requested clarification of specific items from both offerors and, on August 23, 1973, asked both parties to submit their best and final offers by August 28, 1973.

The Tallo Brothers had 12 days more than Dr. DePaula between the initial solicitation and the deadline for final offer, because GSA had initially negotiated with them as a sole-source contractor. Both parties exceeded the 3 to 4 weeks GSA normally allows for submitting offers.

As noted above, GSA opened Dr. DePaula's offer and the Tallo Brothers' offer about 3 weeks apart. In the usual negotiation, all offerors have a common preparation time and deadline in which to submit offers. It would have been preferable to have extended the receipt and opening time for all offerors to a common date and time.

We believe, however, that the time allowed Dr. DePaula to submit his final offer was reasonable in relation to GSA's usual practice.

Allegation

GSA did not consider award factors, other than price, in making the award.

Findings

GSA's contracting officer told us the award was based on the lowest offer. However, GSA and SSA officials told us that both offerors' properties were satisfactory as office sites according to the award factors cited in GSA's solicitation of offers.

The award factors in the solicitation of offers for the SSA lease contract at Hammond included design of space; effect of environmental factors on agency operations; availability of housing for low- and middle-income employees; accessibility of the location; and availability of public parking, dining facilities, and public transportation.

Two SSA officials told us that Dr. DePaula and the Tallo Brothers' properties met the award factor requirements. One official said the Tallo Brothers' property is more convenient to the people it serves and superior to Dr. DePaula's property for SSA's purpose. The official added that the Tallo Brothers' property is located at the fringe of a low-income neighborhood where many of the SSA claimants live. Claimants outside the local area must walk a few extra blocks, but the inconvenience is overridden by the benefits to the local people.

The other SSA official said that the positive factors of the Tallo Brothers' location were (1) the trees and

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surrounding area that made it esthetically attractive and (2) it was close to other agencies--family planning, Louisiana employment security, and vocational training school--that SSA claimants use.

The SSA official who inspected the Tallo Brothers' property did not make a written report but telephoned the acceptability of the property to the SSA district office and to an official of the SSA Dallas regional office. The SSA regional official said that he did not have a written report from the SSA inspector and did not recall receiving a telephone call from him. Further, his files did not show any approval of the property.

A GSA contracting officer told us the verbal approval may not have been documented and he did not know whether SSA had prepared an inspection report. He said some actions were not documented because this was a crash program.

A GSA official told us Dr. DePaula's property was not inspected because it was assumed that it met GSA award factor requirements, since it was in downtown Hammond and adjacent to the building leased at that time. The official also said the award factors were not used to evaluate the proposals because both proposals satisfied the award factor requirements.

It appears that the award was based on price but that other award factors were considered before making the award.

Allegation

GSA assured the Tallo Brothers they would be awarded the contract.

Findings

GSA officials denied they had assured the Tallo Brothers that they would receive the SSA space contract. Mr. Pat Tallo said that no GSA official told him he would receive the contract, and our review of GSA records did not show any evidence that GSA had assured the Tallo Brothers of the contract award.

Our review of the events that occurred before and on July 13, 1973, when GSA was advised of Dr. DePaula's interest in bidding on the contract, strongly suggests that the Tallo Brothers could have concluded that their offer was the only one being considered and that they could have expected to be awarded the contract. For example:

1. In response to the Tallo Brothers' offer in April 1973 to construct a new building, GSA had two SSA officials inspect the suitability of the proposed location.
2. GSA did not advertise for the required space as it had done in the past.
3. GSA had an appraiser make a preliminary appraisal on June 26, 1973, to estimate the fair rental price for the space required and the cost of a building meeting SSA specifications.
4. The appraiser asked the Tallo Brothers to complete a "Lessors Annual Cost Statement", normally required only from the successful offeror.
5. The appraiser told us he could not rule out his saying something to imply that the Tallo Brothers were the only ones being considered, although he did not recall doing so.
6. GSA sent the Tallo Brothers a solicitation on July 13, 1973, requesting submission of an offer within 2 weeks in lieu of the usual practice of allowing 3 to 4 weeks.

Allegation

GSA disclosed Dr. DePaula's offer to the Tallo Brothers and let them resubmit their offer.

Findings

Dr. DePaula told us his primary reason for suspecting that his offer was leaked to the Tallo Brothers was that on August 22, 1973, the final date for accepting offers, GSA

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asked him to revise his offer and gave the Tallo Brothers another opportunity to resubmit theirs. He felt that GSA told the Tallo Brothers the amount of his offer to allow them to make an offer below his.

GSA regulations provide that, after the offers are received, oral discussions be held with all responsible offerors to establish a price acceptable to the Government and to resolve any uncertainties relating to the requirements and specifications. The regulations also provide that a cutoff date be established to terminate negotiations and that offers are to be received until the contract is awarded.

GSA negotiated with the Tallo Brothers on August 3 and 23 and with Dr. DePaula on August 23 and 24, during which time both parties were requested to clarify specific items of their offers. Both parties were told on August 23 to submit their best offers by August 28, 1973.

Available records and discussions with GSA officials did not show any evidence to support Dr. DePaula's suspicion that GSA had disclosed the amount, or source of his offer to the Tallo Brothers, nor did we find that GSA had given the Tallo Brothers an additional opportunity to revise their offer.

Allegation

The Acting Commissioner, SSA, in a letter dated August 28, 1973, to a congressman, said there were no plans to relocate the SSA office in Hammond. Dr. DePaula was concerned about the statement since GSA had already solicited offers for SSA office space in Hammond with an August 28, 1973, deadline for submitting final offers.

Findings

The SSA official who gave the information to the SSA Acting Commissioner told us that he thought the information was correct. He thought GSA was obtaining additional space at the existing location and he was not aware of GSA's solicitations for space elsewhere until after the contract was awarded.

Allegation

In addition to the specific allegations, Dr. DePaula questioned the propriety of GSA's procedures and actions in acquiring the additional SSA space.

Findings

Because of GSA's previous difficulties in acquiring office space in Hammond, the limited response to its 1970 market survey for space, and the regional office's knowledge of the limited space available and to meet SSA's need to relocate by the end of 1973, GSA began negotiations with the Tallo Brothers on a sole-source basis.

After the Tallo Brothers told GSA that the additional space was not available in the building leased at that time and that it would be necessary to construct a new building for SSA, GSA sent a solicitation of offers to the Tallo Brothers on July 13, 1973. The offer was to be received at the GSA Fort Worth regional office by July 27, 1973.

In their proposal dated July 24, 1973, the Tallo Brothers submitted an offer of \$22,918.50, or \$5.476 a square foot, for the annual rental of office and parking space. The floor plan with the Tallo Brothers' offer showed vinyl asbestos tile on the floors, which was contrary to the requirement for carpeting in the solicitation of offer.

GSA opened the Tallo Brothers' offer on August 1, 1973 and telephoned Mr. Pat Tallo on August 3 to tell him of items needing correction and clarification. Mr. Tallo was asked at that time to submit his best rate.

In response to the telephone call, the Tallo Brothers submitted an updated letter amending their proposal to \$5.25 a square foot and clarifying the other questioned items.

GSA's contracting officer contacted Mr. Pat Tallo again on August 23 about the rate to be charged if janitorial services and utilities were provided at times other than during the normal working hours. He was asked for his lowest and final offer by August 28, 1973.

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Mr. Pat Tallo sent a telegram at 6:52 p.m. on August 28, 1973, that was received by the GSA regional office on August 29. Mr. Tallo amended his offer to reduce the monthly rental charge to \$4 a square foot, excluding utilities, but failed to include the charges for overtime janitorial services. The contracting officer contacted Mr. Tallo on August 29 to ask for the overtime service charges. Mr. Tallo made an offer of \$20 for each cleaning at other than normal duty hours which was confirmed by a letter dated August 29, 1973.

A contracting officer told us the Tallo Brothers' offer received on August 29, 1973 was probably accepted as meeting the deadline date because it was sent on August 28. The cutoff date, he said, is to stop negotiations and it is set at the convenience of the Federal Government.

On August 30, 1973, GSA made the award to the Tallo Brothers based on the lowest price offer. The rental rate was \$4 a square foot, excluding utilities, for a monthly rate of \$1,395 and an annual rate of \$16,740.

Although reports are required for all negotiations, a GSA official admitted to being negligent in preparing the SSA contract report in detail because of time constraints. He stated further that several GSA employees and two SSA employees were involved in the Hammond lease and that the entire acquisition had been handled loosely.

On September 12, 1973, GSA asked the Tallo Brothers to submit plans and specifications for constructing the building, as provided in the lease, and samples of carpets and drapes for selection. Mr. Steve Tallo called GSA on September 14, 1973, and said the floor covering for all areas except for the office space would be vinyl tile. The contracting officer told the Tallo Brothers' that the lease required carpeting, and they agreed to provide the carpeting at no additional cost.

The GSA official who reviewed the Tallo Brothers' initial offer said he did not notice that the floor plans had provided for tile instead of carpeting. He said that, had he noticed, he would have requested clarification. He explained further that he may not have looked closely at the floor plan because no deviations from the solicitation were described in the offer form or in the transmittal letter.

We found, however, that GSA did notice that Dr. DePaula's offer provided for vinyl asbestos floor covering in lieu of the required carpeting. This deviation, among others, was brought to Dr. DePaula's attention on August 23, 1973. Dr. DePaula increased his offer from \$13,200 to \$17,000 a year. He said that \$2,000 of the increase was to cover the carpeting cost, and that no charge would be made for janitorial service resulting from use of office space other than during normal working hours.

Conclusion

It seems apparent that GSA failed to properly review the Tallo Brothers' offer, which resulted in awarding a contract based on an offer that did not fully comply with the solicitation of offers. Although the Tallo Brothers later complied with the solicitation requirements, without cost to the Government, GSA's failure to properly review their offer was an administrative deficiency that could have affected the amount of the Tallo Brothers' offer.

While there is no certainty, at this point, what the Tallo Brothers would have offered had the deficiency concerning carpeting been brought to their attention at the appropriate time, it seems safe to assume that an increase of more than \$260 for the 4,185 square feet of carpeting would have been submitted.

Although GSA solicited the price for overtime janitorial services and Dr. DePaula's offer included no charge for such services and the Tallo Brothers' offer included a \$20 charge for each cleaning, GSA ignored the matter for evaluation purposes.

Further, as previously stated, the contracting officer continued negotiating with the Tallo Brothers after the final date for submission of offers. The date for receipt of best and final offers implies that offers will not be received after that date and the continued negotiations with one competitor to the exclusion of others, at least, appears prejudicial.

In our opinion, the above noted GSA deficiencies in soliciting and reviewing the offers represented poor procurement practices but are not sufficient to render the contract award to the Tallo Brothers clearly illegal.

While we found no evidence that GSA willfully or intentionally acted improperly; when viewed as a whole, these deficiencies create the appearance of favoritism towards the

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Tallo Brothers, which in turn casts doubt that the procurement was conducted impartially. Further, GSA procedures here provide no assurance that the award was made to the low offeror conforming to the specifications.

Agency Comments

By letter dated October 7, 1974, we asked the Administrator, GSA, to review and comment on our findings and tentative conclusions. By letter dated December 30, 1974, the Acting Administrator, GSA, said the infractions we noted were insufficient to support the conclusion that the course of conduct followed by GSA was prejudicial to Dr. DePaula or in contravention of GSA's regulations. (See app. II.)

He disagreed with our opinion that the procurement raises a question as to the impartiality of the transaction and that it appears to favor the Tallo Brothers. He claims the record shows that Dr. DePaula was given full opportunity to participate in the solicitation of offers normally accorded all interested offerors after GSA learned of his interest in the project and that the initial negotiation with the Tallo Brothers was in accordance with GSA's operating policy.

He said it was regrettable that GSA had not told the Tallo Brothers before the contract was awarded that their offer did not provide for the proper floor covering. He pointed out, however, that the Tallo Brothers recognized carpeting as a contract requirement when the matter was called to their attention and that they had not asked for, nor had the Government paid, a rent increase for the carpeting. However, he said that the omission on the part of the contracting officer to require a clarification of the Tallo Brothers' offer was not justified under the circumstances recited in the report.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405



DEC 30 1974

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

This concerns the draft audit by your office relative to the leasing of office space in Hammond, Louisiana, for use by the Social Security Administration (SSA).

The inquiry was directed to the validity of certain allegations made by Dr. DePaula, one of the two participants offering to provide space for lease to the Government, concerning the propriety of the procedures followed in the acquisition of space by the General Services Administration (GSA).

Of the seven allegations that were made, the findings in the draft report covering four of these indicate without exception that GSA's actions were in compliance with regulations and appropriate under the circumstances of the acquisition. Although the findings in connection with the other allegations did take exception to the manner in which the regional office fulfilled procedural requirements in this procurement, these infractions were found to be insufficient to support the conclusion that the course of conduct followed by GSA was prejudicial to Dr. DePaula or in contravention of GSA's regulations.

In response to these latter findings, however, we must take exception to the statements on pages 10 and 18 of the report, that the procurement ". . . raises a question as to the impartiality of the transaction" and that it ". . . appears to favor the Tallo Brothers." Contrary to these opinions, there is ample evidence in the record that Dr. DePaula was given the full opportunity to participate as normally accorded all interested offerors after we learned of his interest in this project.

With respect to the opinion that the entire transaction, when viewed as a whole, appears to favor the Tallo Brothers, we believe there is sufficient evidence in the lease file to support the region's actions in attempting to provide space at the existing leased location particularly since the instant

GAO note: Page references in this appendix may not refer to the final report.

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APPENDIX II

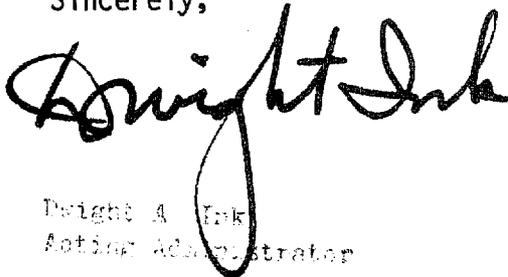
acquisition was related to a new and urgent program requirement of SSA and because GSA's operating policy is to give preference to succeeding leases, where justified, to reduce the number of agency moves.

Finally, the report concludes that there is a lack of assurance that, pursuant to proper competitive negotiation procedures, the award was made to the low offeror conforming to the specifications. This conclusion is based on the assumption that the Tallo Brothers' offer did not include the carpeting required by the Solicitation for Offers (SFO) and that if they had done so, it would have been reasonably safe to assume that the offer would have been higher than that submitted by Dr. DePaula. The Tallo Brothers' Proposal to Lease Space to the United States of America, GSA Form 1364, obligated them to meet the SFO and they did not specify any deviation thereto as required by paragraph 7 of the instructions to offerors. In the case of Dr. DePaula's offer, however, there were major deviations specified on the offer form.

The purpose of paragraph 7 is to provide a method of calling any deviations directly to the attention of the contracting officer, as it is unreasonable to expect him, in cases where detailed plans and specifications are submitted, to be aware of variances from the SFO, unless they are pointed out by the offeror.

However, in the instant case we are advised that Tallo's plans and specifications consisted of only a single floor plan which indicated that the floor covering was "V.A. Tile." While it is regrettable that this matter was not called to the attention of the Tallos prior to the award of the contract, we wish to point out that the Tallo Brothers did recognize carpeting as a contract requirement when the matter was subsequently called to their attention and they did not request, nor did the Government pay an increase in rental for the carpeting furnished. However, these circumstances do not justify the omission on the part of the contracting officer to require a clarification of the offer under the circumstances recited in the report.

Sincerely,



Dwight A. Ink
Acting Administrator